



**Lotspeich and Associates, Inc.**

Ecological Consultants

*Celebrating 29 Years of Analyzing Natural Environments for the Regulated Community*



## **Ecological Hot Topics**

**28 October 2009**

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**INTEGRATING ECOLOGICAL SCIENCES FOR A GROWING ENVIRONMENT**



## Ecological Hot Topics

- FFWCC – Proposed Species Listing Process
- Bald Eagle – State and Federal Management Guidelines
- Gopher Tortoise – Update on State Procedures and Proposed Federal Listing
- USACE – New Wetland Delineation Rule and Mitigation Process
- Senate Bill 2080 – Water Management Districts
- SJRWMD – Proposed Regulations for the releasing of Conservation Easements
- Other “Not Quite So Hot” Topics
- Reminder about deadline for 2 year extension to existing permits



## FFWCC Proposed Species Listing Process

- The federal designation will automatically apply to all species listed as endangered or threatened under the Endangered Species Act (ESA).
- State only designation – Threatened.
- Current Species of Special Concern (SSC) will be evaluated for listing as State-designated Threatened species. A management plan will be developed for any SSC that do not meet the listing criteria.
- Delisted species will still be afforded protection under approved management plans.
- Permits from the FFWCC will no longer be required when the take of Federally-designated Endangered and Threatened Species has been authorized.
- The FFWCC will now issue Incidental Take Permits for State-designated Threatened species (gopher tortoises excluded).



## **Bald Eagle – State Management Guidelines**

- Disturbance Permits (no direct taking of a nest or eagle).
- Conservation Measures:
  1. Contribute \$35,455 to the Bald Eagle Management Fund to support bald eagle monitoring and research.
  2. Provide financial assurance in the amount of \$50,000.
  3. Grant a conservation easement over the 330-foot buffer zone.
  4. Grant a conservation easement over suitable nesting habitat on-site or off-site.
  5. Propose an alternate conservation measure.
- One (1) conservation measure is required for activities between 330 and 660 feet. A \$35,455 contribution and one (1) additional conservation measure is required for activities within 330 feet.
- Anticipated timeframes are 30-45 days for application/RAI review, and 90 days to process a complete application and issue the permit.

## Bald Eagle – Federal Management Guidelines

- Not ESA but implemented by USFWS under BGEPA (and MBTA).
- Permit Fees: Standard = \$500, Programmatic = \$1,000
- 60-90 days for processing of application; however, no established statutory timeframes for permit issuance.
- Processing timeframes may be similar to Section 7 consultations (6-12 months).
- Review process will likely be “rigorous and lengthy”.
- Required to consult with the FFWCC concurrently with USFWS application.





## Gopher Tortoise – New Rules in Practice

- Surveys and live-capture/relocations require an Authorized Agent.
- All submittals now electronic - working well with a few complications.
- Payment of permit fees required upon application with refund of any overage.
  - a. 10 or Fewer Burrows = \$200.00
  - b. Conservation Permit
    - a. long term protected site = \$200 for the first 5 tortoises and \$300 for each additional tortoise.
    - b. short-term protected site = \$200 for the first 5 tortoises and \$3,000 for each each additional tortoise.



*A short-term protected site is either privately or publicly owned conservation land that has some enforceable protection measure(s) in place but not to the extent of long-term sites.*

- RAIs within 10-15 days, most permits within 30-45 days (90 days allowed).
- FFWCC staff are reviewing virtually every project site.



## Gopher Tortoise – New Rules in Practice

- Recipient site fees ranging from \$850 - \$1,250 per tortoise. Cost typically include all activities required by the FWC post-relocation.
- Contract terms continue to be an issue with some recipient sites (non-refundable deposits, payment terms, etc.)
- The USFWS considering listing the species as Threatened under ESA.
- 90-day Finding on Petition published on 9 Sept. 2009.
- 12 months to determine if action is warranted.
- Therefore, at least a year until anything new.



## USACE – Wetland Delineation and Mitigation

- Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Oct. 08).
- Not much new about the manual – a few scientific adjustments.
- Revised mitigation approach – “Soft” Preference Hierarchy
  1. Mitigation Banks
  2. In Lieu Fees
  3. Permittee-responsible mitigation
- More stringent on details for Permittee-responsible options.





## Senate Bill 2080, Water Management Districts

- Became law on 1 July 2009 and changed the process by which water resource permits are processed by the State's Water Management Districts (WMD).
- "Individual" permits historically went to the governing board, now the Executive Director, or someone they appoint (typically local staff), approves all permits.
- The governing board will only review applications recommended for denial.
- Applications recommended by staff for approval are sent to Exec. Director, then put on the agenda for the next Public Permitting Meeting (held monthly).
- If no significant concerns are raised by citizens during the meeting, then the application will be transmitted to the Executive Director or designee for final approval.
- The new process should shorten the time to permit issuance by 30 days, or so, once an application is deemed complete.



## Proposed Rule Development - SJRWMD Release of Conservation Easements

- Replaces written policy (cir. 2006) that was discontinued last year.
- Provides formal procedure and criteria for removal of CEs.
  - On-site adjustments
  - ...not needed to meet regulatory requirements
  - Public projects
  - Way of necessity claims
  - Single-family lots
  - Legal errors
- For on-site adjustments, it must be demonstrated that the acreage and ecological value of the uplands and wetlands preserved by conservation easement after the release/amendments will be the same or greater.



## Proposed Rule Development - SJRWMD Release of Conservation Easements

- Regulatory conservation easements not needed to meet regulatory requirements will need to meet the following criteria for release or amendment:
  1. The area under easement wasn't used as mitigation for permitted impacts or to meet other regulatory requirements.
  2. The easement encumbers an area where the mitigation has failed, and the permittee has received a permit modification for alternative mitigation and implemented the alternative mitigation plan.
  3. The permittee hasn't begun construction, and has obtained a permit modification approving a different mitigation plan.
  4. For a mitigation bank where no credits have been sold or used.
- Public projects are considered to be any project implemented by, or on behalf of, an entity with the power of eminent domain to condemn the easement.
- The District will still require an “avoidance and minimization” discussion.



## Proposed Rule Development - SJRWMD Release of Conservation Easements

- The District will release area from an easement located on a single-family lot in exchange for mitigation bank credits or participation in a ROMA.
- The District will release the minimum area needed for the lot owner to have a buildable area of up to 6,000 square feet on the lot, where buildable area means the portion of the lot available for a residence and other improvements, excluding any required setbacks.
- The District will release/amend an easement when it is necessary to correct legal errors or to conform with the requirements of applicable permit conditions.
- Examples include: where the easement encumbers an entire subdivision rather than those areas required by the permit; the legal description of the easement is legally incorrect; the easement was conveyed by an entity with insufficient legal interest, or the language of the easement is inconsistent with the permit conditions.



## Other “Not Quite So Hot” Topics

- Wetland Mitigation Banks
  - Numerous new banks now available and pending (51/41)
  - Prices continue to rise (currently \$115K-\$180K per UMAM credit)
  - Availability dropping at some banks
- West Indian Manatee - still being considered for re-classification to Threatened, management requirements likely to remain.
- Sand Skink – new survey and management requirements pending, likely to result in more “occupied” habitat
- Osceola County Comprehensive Plan
  - Adopted with amendments in April 2008
  - Tiered wetland classification system based upon UMAM score
  - Upland buffer width based upon Class I, II or III (50 ft. min. for Class I)
  - Not in LDC yet, but being enforced when land use change requested





## Reminder about Permit Extension Deadline

- Two Year extension still available for:
  - State or WMD issued permits
  - Local government issued development orders (including build-out date)
  - Building permits
- Expiration date of original permit must be between 1 Sept. 2008 and 1 Jan. 2010
- Not applicable to programmatic or general permits from the Corps.
- Request for Extension must be received no later than 31 December 2009.



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**Questions?**

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